

## Senate Bill No. 1091

### CHAPTER 148

An act to amend Section 868.5 of the Penal Code, relating to witness testimony.

[Approved by Governor July 17, 2012. Filed with  
Secretary of State July 17, 2012.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1091, Pavley. Witness testimony: support persons.

Existing law authorizes a prosecuting witness in cases involving specified crimes, including, among others, murder, kidnapping, robbery, assault, and rape, to have up to 2 persons of his or her own choosing for support at a preliminary hearing and at trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness.

This bill would expand the list of cases in which a prosecuting witness may have support persons to include, among others, cases involving human trafficking, prostitution, child exploitation, and obscenity, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. Section 868.5 of the Penal Code is amended to read:

868.5. (a) Notwithstanding any other law, a prosecuting witness in a case involving a violation of Section 187, 203, 205, 207, 211, 215, 220, 236.1, 240, 242, 243.4, 245, 261, 262, 266, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 266k, 267, 269, 273a, 273d, 273.5, 273.6, 278, 278.5, 285, 286, 288, 288a, 288.5, 289, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.10, 311.11, or 647.6, former Section 277 or 647a, subdivision (1) of Section 314, or subdivision (b), (d), or (e) of Section 368 when the prosecuting witness is the elder or dependent adult, shall be entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness. Only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. The person or persons so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person or persons are related to the prosecuting witness as a parent, guardian, or sibling and do not make notes during the hearing or proceeding.

(b) If the person or persons so chosen are also witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting

witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because it has been given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.